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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*HC*

**Office Action Summary**

Application No.

10/777,510

Applicant(s)

KENNY, ELIZABETH

Examiner

Yvonne R. Abbott

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 7/18/05 have been fully considered but they are not persuasive. The drawing objection of the previous Office Action and rejection based on the second paragraph of 35 U.S.C. 112 have been withdrawn in view of Applicant's Remarks. As to the application of the Bremm (US2004/0194733) and Kisko (6095093) references, Applicant asserts the neither reference discloses the claimed teaser or even a device that can be used like claimed teaser. With respect to Kisko, Applicant goes on to state that it "would not work well with a majority of animals". Firstly, this statement admits that it would work with some animals. Secondly, Applicant is arguing intended use of the device that structurally reads on the claimed invention, and furthermore is capable of being used in the intended manner. In response to applicant's arguments, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Structurally, both Bremm and Kisko disclose the claimed invention and are capable of being used in the intended manner (i.e. teasing) by waving the device to excite a reaction from the pet (e.g. if waving the leash makes a dog think they're going outside). Applicant states that with respect to Claim 4, Bremm and Kisko don't teach having the fastening strap "turned upon itself". For clarification purposes, it should be noted that this limitation is recited

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in Claim 3 (not Claim 4). Further, Bremm (p. 2, paragraph 0017) discloses the fastening mechanism of Claim 3 wherein the strap, having hook and loop fasteners, after being brought through the buckle is fastened to or "turned upon" itself. With respect to Claim 10, it is maintained that the teasers of Bremm and Kisko are considered to be made of smooth material, wherein smoothness is considered a relative term. As to the Swendseid reference (5505161), Applicant argues that it would not be comfortable to wear the device. As comfortability is considered relative, this argument has little merit. Additionally, it could depend on how the device is worn (i.e. where the clamp surrounds the arm without pinching), similarly to a bracelet. Applicant states that Takahashi (5357904) does not disclose or even suggest "that braided portion (4) can be releasably affixed about a human limb." It should be noted that this was never recited in the previous Office Action with respect to Takahashi. In fact, the Office Action states that the cuff is mounted at the top of a stretchable tether, and a teaser is affixed to an other (second) end. Thus, there would be no risk of injury or interference with the bell upon insertion of a person's limb as asserted by Applicant. The DeBruler (2194736) reference discloses the claimed invention by showing a loop portions that are capable of being releasably affixed about a limb. Applicant's arguments against the application of DeBruler state that the device is not "sized appropriately" to operate in the claimed manner, however, this is refuted since the size of one's arm, or even the doorknobs, is considered relative. The claimed structure is taught and the DeBruler invention is capable of functioning in the manner intended. With respect to Applicant's

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arguments regarding Claim 2, additional prior art references have been applied and cited which teach that weighted belts and armbands are well known. Response to new claims 12-20 can be seen in the following paragraphs.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: it is not disclosed in the specification that both the tether and teaser have first ends coupled to the cuff as claimed in the combination of claims 1 and 12.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tether and teaser both having first ends coupled to the cuff as claimed in the combination of claims 1 and 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing

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figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not understood, how the pole can be "located between the cuff and the tether" as recited in claim 15, when the combination of claims 1 and 12 (from which claim 15 depends) recites that the tether and teaser both have first ends coupled to the cuff.

5. For the purposes of this Action, Claims 12-15 are considered to correspond to the embodiment(s) disclosed in the specification (pages 12-14), Claims 16-20 (specifically claim 17) and Figures 7-9.

***Claim Rejections - 35 USC § 102***

A person shall be entitled to a patent unless –

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a. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

b. (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

7. Claims 1, 4,6, 8, 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Bremm (2004/0194733). Bremm shows an animal leash system comprising a cuff (50) operably configured to be releasably affixed about a human limb; a tether (12) affixed at a first end to the cuff; and a teaser (24) affixed to the second end of the tether; wherein Applicant's disclosure admits that the teaser may be "any other object of a suitable shape, configuration, material and appearance as would be attractive or interesting to the type of animal with which device is intended to be used" (Applicant's specification, page 10); accordingly an object which teases is considered to be relative, and when not fastened to the animal, the "teaser" (24) may be used a s ring or loop on which an animal tugs and pulls; the cuff comprises a thin, elongated web having opposed first and second ends, and opposed first and second surfaces; and cooperative fastening elements, one fastening element disposed on a first surface of the web at a first end thereof, and the other fastening element disposed on a second surface of the web at a second end thereof (see page 2, paragraph [0017]); wherein cooperative releasable fastener elements in the form of fastener (20) and ring (22) affixed to the

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tether and the teaser, respectively so that the teaser may be removed from the tether and replaced by another teaser; wherein the teaser is considered to be made of a relatively smooth material.

8. Claims 1, 4-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kisko et al. (6,095,093). Kisko et al. show an animal leash system comprising a cuff or sleeve (14) operably configured to be releasably affixed about a human limb; a stretchable tether affixed at a first end to the cuff; wherein the tether includes attachment portion (32) and teaser portion (34); and a teaser (38,40) affixed to the second end of the teaser portion of the tether; wherein Applicant's disclosure admits that the teaser may be "any other object of a suitable shape, configuration, material and appearance as would be attractive or interesting to the type of animal with which device is intended to be used" (Applicant's specification, page 10); accordingly an object which teases is considered to be relative, and when not fastened to the animal, the "teaser" (24) may be used as a ring or loop on which an animal tugs and pulls; the cuff comprises a thin, elongated web having opposed first and second ends, and opposed first and second surfaces; and cooperative fastening elements (16), one fastening element disposed on a first surface of the web at a first end thereof, and the other fastening element disposed on a second surface of the web at a second end thereof; wherein cooperative releasable fastener elements in the form of fastener (36) affixed to the tether and the teaser, respectively so that the teaser may be removed



from the tether and replaced by another teaser; wherein the teaser is considered to be made of a relatively smooth material.

9. Claims 1, 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Krietzman et al. (5,474,032). Krietzman et al. shows an animal amusement device comprising a cuff (20) which can be releasably affixed about a human limb depending upon the size of the limb; a pole or wand (21) having a first end coupled to the cuff; a tether (30) coupling a teaser (40) to a second end of the pole, wherein the tether is located between the teaser and the second end of the pole; wherein the pole is adapted to hold the teaser at a distance away from the cuff; and wherein the pole is flexible.

10. Claims 1, 6, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Swendseid (5,505,161). Swendseid shows a pet toy comprising a cuff (32) operably configured to be releasably affixed about a human limb; a stretchable tether (20) (col. 2, lines 6-8) affixed at a first end to the cuff; and a teaser (16), wherein the teaser has a shape that is at least one of ball-like, elongated, or branched (col. 2, lines 10-12).

11. Claims 1, 6, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi et al. (5,357,904). Takahashi et al. show an animal leash system comprising a cuff or sleeve operably configured to be releasably affixed about a human limb and mounted at the top of a stretchable tether (6) affixed at a first end to the cuff; and a teaser (2,7,8) affixed to the second end of the tether; wherein the teaser has a

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shape that is ball-like, elongated or branched; and wherein the teaser is fabricated from at least one of a smooth, rubbery, furry feathery, fuzzy or spongy material.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 6, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Bruler (2,194,736). De Bruler shows and animal exercise and amusement device comprising a cuff (24,32), a tether (22,30) attached to the cuff and having a stretchable portion, and a teaser (28, 34); wherein the teaser has a shape that is ball-like, elongated or branched; and wherein the teaser is fabricated from at least one of a smooth, rubbery, furry feathery, fuzzy or spongy material. De Bruler, however, does not show that the cuff, tether and teaser are separately affixed parts. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

14. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bremm (2004/0194733) in view of Winston (6,113,521). Bremm discloses a waist belt (50), however it is not shown to contain weighted material. Winston teaches a belt

containing weights. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that compartments of the Bremm belt contain weighted material as taught by Winston so that the user can exercise hands-free during routine activities. With respect to claim 3, it is disclosed by Bremm that a fastening strap is affixed to the cuff, the fastening strap having a first looped end and a second free end; cooperative fastening elements, affixed to a surface of the fastening strap, proximate the first looped end and the second free end thereof, respectively; and a buckle, captured by the first looped end of the fastening strap, whereby the cuff may be wrapped about a human limb, and releasably affixed by passing the second free end of the fastening strap through the buckle, and turned upon itself, to bring the cooperative fastening elements against one another in releasably fastening contact (page 2, paragraph [0017]).

15. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kisko et al. (6,095,093) in view of Winston (6,113,521). Kisko et al. show an animal leash system comprising a cuff or sleeve (14) operably configured to be releasably affixed about a human limb; a stretchable tether (34) affixed at a first end to the cuff; and a teaser (38,40) affixed to the second end of the tether. Kisko et al., however, do not disclose that the cuff comprises compartments containing weighted material. Winston teaches a weighted cuff assembly to be affixed to a human limb having sacks or compartments which contain weights; Winston further teaches a fastening strap (70) having hook and loop material (72) wherein the strap extends through the buckle (74)

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and is turned upon itself to fasten as at (76). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the cuff of Kisko et al., to be used while the pet owner walks, jogs, runs (i.e. exercise), additionally contain weights as taught by Winston, to provide additional training and exercise as desired.

16. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bremm in view of Noguero (6,422,177). Bremm shows a device (24) capable of use as a teaser, however it is not shown that the teaser is provided with a variety of depending objects being shiny, reflective, fluorescent, phosphorescent, transparent or translucent. Noguero teaches the attachment of a variety of depending objects to a collar which is capable of use as a teaser. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the collar of Bremm have decorative attachments as taught by Noguero in order to alter the appearance of the collar, or distinguish the collar from others.

17. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galkiewicz (4,499,855) in view of Antosh (5,910,004). Galkiewicz shows an animal tease device comprising a pole (20) having a first end to be held by the user; a tether (26) coupling a teaser (28) to a second end of the pole, wherein the tether is located between the teaser and the second end of the pole; wherein the pole is adapted to hold the teaser at a distance away from the user; and wherein the pole is flexible.

Galkiewicz, however, does not disclose that a cuff is attached to the first end of the

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pole. Antosh teaches a pole (20) having a cuff (11) attached to the first end of the pole, wherein the cuff is operably configured to be releasable affixed about a human limb. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Galkiewicz pole have a cuff attachment as taught by Antosh in order to provide support to the user while holding the pole for periods of time, or as the animal tugs on the teaser.

18. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viner et al. (Des. 309,964) in view of Antosh (5,910,004). Viner et al. show an animal tease device comprising a pole having a first end to be held by the user; a tether coupling a teaser to a second end of the pole, wherein the tether is located between the teaser and the second end of the pole; wherein the pole is adapted to hold the teaser at a distance away from the user; and wherein the pole is flexible. Viner et al., however, do not disclose that a cuff is attached to the first end of the pole. Antosh teaches a pole (20) having a cuff (11) attached to the first end of the pole, wherein the cuff is operably configured to be releasable affixed about a human limb. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Viner et al. pole have a cuff attachment as taught by Antosh in order to provide support to the user while holding the pole for periods of time, or as the animal tugs on the teaser.

***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

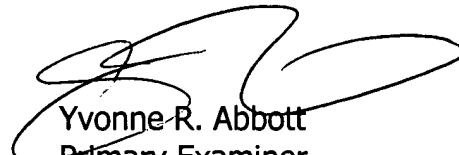
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott  
Primary Examiner  
Art Unit 3644